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Beneficial associations have the same right to restrain the use of similar names as have commercial associations where such use is shown to be injurious. *Society of the War of 1812 v. Society of the War of 1812 of New York*, 46 App. Div. 568, 63 N. Y. Supp. 355; *Daughters of Isabella v. National Order of Daughters of Isabella*, 83 Conn. 679, 78 Atl. 333. See *contra*, *Colonial Dames of America v. National Society, Dames of America*, 29 Misc. Rep. 10, 60 N. Y. Supp. 302 (affirmed in 173 N. Y. 586, 65 N. E. 1115), where it is attempted to distinguish beneficial and commercial associations in this respect, but the decision seems based in fact on laches and a failure to show injury caused by the use of the name.

Though there is some conflict, the weight of authority is strongly in favor of restraining such infringement of names where harm is caused thereby. *Cape May Yacht Club v. Cape May Yacht and Country Club*, 81 N. J. Eq. 454, 86 Atl. 972; *Salvation Army in United States v. American Salvation Army*, 135 App. Div. 268, 120 N. Y. Supp. 471; *Grand Lodge, Knights of Pythias of North and South America v. Grand Lodge, Knights of Pythias*, *supra*.

WATER AND WATERCOURSES—RIPARIAN OWNERS—INJUNCTION—BALANCE OF INJURY.—The defendants operated a large electric plant, using water power to drive its generators. Their dam had flooded water back over the plaintiff's land, lessening the amount of available power upon the river above it. The land so flooded consisted of barren, perpendicular rock which formed the channel to the stream and furnished a valuable site for a mill, although not put to such use. The invading waters caused no great immediate pecuniary loss to the plaintiffs, while to have lowered the offending dam would have meant a considerable loss to the defendants. An injunction was granted against the defendants, but upon appeal the court decreed a suspension of the judgment until a substantial injury could be proved. Plaintiffs appealed from this decree. *Held*, the decree will not be disturbed. *McCann v. Chasm Power Co.* (N. Y.), 105 N. E. 416.

This decision was based upon the ground that the plaintiff's injury was slight, while the granting of the injunction would work disaster to the defendants. This doctrine of the "balance of injury between individuals" is supported by *dicta* in some cases, and was formerly, at least, the law in a few jurisdictions. See *Stock v. Jefferson*, 114 Mich. 357, 72 N. W. 132, 38 L. R. A. 355; *Richard's Appeal*, 57 Pa. St. 105, 98 Am. Dec. 202, since overruled in *Evans v. Reading, etc., Fertilizing Co.*, 160 Pa. St. 209, 28 Atl. 702. It seems that upon an application for a preliminary injunction, the court may use its discretion and refuse to grant a decree which will work hardship to the defendant when the violation of the plaintiff's right does not work material injury. *Contra Costa W. Co. v. Oakland*, 165 Fed. 518; and see *Evans v. Reading, etc., Fertilizing Co.*, *supra*.

But upon an application for a permanent injunction both reason and authority are *contra* to the instant case. *Wesson Paper Co. v. Pope*, 155 Ind. 394, 57 N. E. 719; *Evans v. Reading, etc., Fertilizing Co.*, *supra*.

It would seem that since there is a trespass upon plaintiff's legal right to have the natural fall of the stream undisturbed, the violators of this right should not be allowed to set up their own detriment in defense. And this is the view taken by the Courts. *Whalen v. Paper Co.*, 208 N. Y. 1, 101 N. E. 805; *Evans v. Reading, etc., Fertilizing Co.*, *supra*.

The defendant by adverse user may acquire a permanent right to flood the plaintiff's land. *Whitehair v. Brown*, 80 Kan. 297, 102 Pac. 783. While the plaintiff by continued suits could protect his rights, the jurisdiction of equity to remove the cloud on the plaintiff's title seems clear. See 1 VA. L. REV. 246.

**WILLS—CONTRACT TO DEVISE—QUANTUM OF EVIDENCE.**—A husband and his wife executed mutual wills, but the husband later disposed of his property by a different will. Devisees under the first will sought to establish a contract for the execution of the mutual wills, and prayed specific performance thereof. *Held*, the evidence being unconvincing, specific performance will not be decreed. *Wanger v. Marr* (Mo.), 165 S. W. 1027.

In cases where specific performance is prayed, evidence of the existence of the contract alleged must be clear and convincing. *Rockecharlie v. Rockecharlie* (Va.), 29 S. E. 825; *Melville v. Waring*, 159 Mo. App. 395, 141 S. W. 12. And its terms must be certain and definite. *Fielder v. Warner*, 78 Ark. 158, 95 S. W. 452. *A fortiori* convincing evidence is required in the case of contracts to dispose of property by will. Some of the courts have gone so far as to say that the contract must be established beyond a reasonable doubt, although perhaps in none of the cases was there actual necessity for such emphatic language. *Russel v. Sharp*, 192 Mo. 270, 91 S. W. 134, 111 Am. St. Rep. 496. The mere execution of mutual wills is not per se evidence that they were based on a contract. *Edson v. Parsons*, 155 N. Y. 555, 50 N. E. 265.

The Statute of Frauds was not applied in the instant case. Yet it is well settled that parole agreements to devise are within its purview. *Gould v. Mansfield*, 103 Mass. 408, 4 Am. Rep. 573; *Hale v. Hale*, 90 Va. 728, 19 S. E. 739; 20 Cyc. 235. Furthermore, the actual execution of mutual wills, in pursuance of a contract, does not furnish a sufficient memorandum in writing to satisfy the statute, unless the contract is expressly mentioned in the will. *Hale v. Hale*, 90 Va. 728, 19 S. E. 739; *Gould v. Mansfield*, 103 Mass. 408, 4 Am. Rep. 573. Nor is the actual execution of his will by one of the parties to such an agreement sufficient part performance to satisfy the statute.

**WILLS—CONVERSION—EQUITABLE CONVERSION OF REALTY INTO PERSONALTY BY WILL.**—A testator died leaving his property, real and personal, to his wife, and on her death certain sums of money to his sons and other beneficiaries. Before the death of the wife, the plaintiff, a creditor of one of the sons, obtained judgment on his claim and levied upon the interest of the son in the real estate. At the sale the plaintiff bought such interest. *Held*, on the death of the testator there was